

**City of Ellsworth
Planning Board Meeting
Minutes — January 10, 2018**

Vice Chairman Darrell Wilson, member Jim Barkhouse, member Roger Lessard and alternate member John DeLeo were present. Chairman John Fink and Secretary Mike Howie were absent. The seventh seat on the board (second alternate member) is currently vacant. In the absence of Chairman Fink, Vice Chairman Wilson chaired the meeting.

City Planner Michele Gagnon, Code Enforcement Officer Dwight Tilton, Fire Inspector Mike Hangge and Assistant City Planner Steve Fuller attended the meeting. City Manager David Cole was in the audience for part of the meeting.

Call to order: Chairman Darrell Wilson called the meeting to order at 7:00 PM.

Wilson noted the four members present constituted a quorum. He said that with an even number of members, a 2-2 vote would not carry. He advised applicants could choose not to be reviewed at this meeting and come back at a later date if they wished. He also noted that agenda item #5, a preliminary plan for a project known as Atlantic Storage for Atlantic Landscape Construction, had been removed from the agenda prior to the meeting (at the applicant's request).

1. Adoption of minutes from the October 25, 2017 site visit (at Woodlawn).

Chairman Wilson proposed a correction in the second sentence of the sixth paragraph of the draft minutes: "The barn is being destroyed by powder post beetles, which are slowing slowly transforming the wood into a powder." Alternate member John DeLeo moved to approve the minutes as corrected, and member Jim Barkhouse seconded. There was no discussion. The motion then passed unanimously (4-0).

2. Adoption of minutes from the November 29, 2017 site visit (at Atlantic Storage)

3. Adoption of minutes from the December 6, 2017 regular monthly meeting

**Call to Order @
7:00 PM**

Explanation from the chair about quorum, split votes and option for applicants to come back at a later date

Note made of change in agenda (one item removed in advance)

**Adoption of Oct. 25, 2017 site walk (Woodlawn) minutes, as corrected:
APPROVED (4-0)**

**Adoption of Nov. 29, 2017 site walk (Atlantic Storage) minutes and Dec. 6, 2017 regular monthly meeting minutes:
APPROVED (4-0)**

Chairman Wilson proposed taking items 2 and 3 together as one item. No one opposed this idea, and there were no corrections noted in either set of minutes. Barkhouse motioned to approve both sets of minutes and DeLeo seconded. The motion then carried unanimously (4-0).

4. Modification to a September 5, 2012 approved and recorded Major Subdivision Plan and re-approval of a non-established/lapsed Major Use Site Development Plan titled Beckwith Pines for Down East Maine Property Management. The approved plan consists of two, four-unit apartment buildings and the proposed modification is for four, two-unit apartment buildings on a 2.3-acre parcel off Route 3/High Street via Beckwith Court (Tax Map/Lot: 16/47-3), in the Commercial Zone.

- a. PUBLIC HEARING AND DETERMINATION OF APPLICATION COMPLETENESS
- b. PUBLIC HEARING, DELIBERATION, FINDING OF FACTS AND CONCLUSION

a. PUBLIC HEARING AND DETERMINATION OF COMPLETENESS

Mac Harriman, land surveyor, and Alina Watt, project engineer with Hedefine Engineering & Design, represented the applicant (Mike Wight, principal of Down East Maine Property Management).

City Planner Michele Gagnon reminded the applicant the process was restarting. Chairman Wilson explained the two-step review process, the first step being determination of completeness for a particular plan and the second being a final review of the plan. He said both steps were being done at the same meeting tonight, which, while not common practice, has also been done before. Gagnon noted the determination of completeness was being re-done. She said she was asking for the re-start of the process because when notices went out to abutters for that previous meeting, the system did not capture all the specific properties/addresses that it should have — it captured the Beckwith Woods Community Association (homeowners association) as one entity but did not capture the individual residents therein. Consulting with city legal counsel led to the adoption of the process outlined tonight. Gagnon said she explained what happened to the affected abutters and apologized for the notification oversight. Gagnon referenced a community meeting the city hosted in December where the developer was able to sit down with abutters including residents of Beckwith Woods (the existing development) and discuss matters and concerns that fall outside of the scope of normal planning board review (i.e.,

**BECKWITH PINES,
for Down East Maine
Property
Management**

**Mac Harriman and
Alina Watt represent
the applicant, Down
East Maine Property
Management**

**City Planner Gagnon
explains why the
review process is
restarting**

**Mailing address issues
relating to properly
notifying all abutting
residents prior to
previous meeting**

**Community meeting
held for abutters to
meet with project
developer last month**

placement of mailboxes, who will plow, etc.). Gagnon said she wanted the record to reflect what had happened and reiterated that the oversight was not intentional.

Wilson said the review was starting from the beginning. Harriman explained the plan had been reviewed and approved previously in 2012 but modified since then and was being brought back for re-approval now. Wight is also new as the project's developer.

Member Jim Barkhouse asked what the situation was with the sewer lines. Gagnon explained that when the project was first built, a sewer line was put in with a 10-foot easement to serve the first phase of the project but which was also intended to serve the second phase of the project. That second phase was not built, and then a plan was brought forward and approved in 2012 to build the second phase. Once again, the project lapsed and was not constructed. When it was brought forward again in 2017, staff realized that hooking two separate projects onto one sewer line as a private sewer line was not allowed under city ordinance. It would have to be taken over as a public line, and doing that would require an easement larger than 10 feet. Gagnon said that due to the special circumstances of the project and after city staff had determined there would be no adverse impact on public health, safety or welfare, the City Council had granted an exception in this case (with some conditions) allowing the applicant to hook into the existing private line. Gagnon said the applicant would need to take steps to take advantage of the exception, including ensuring that the line is in good condition and that there is an agreement with the owners of the existing line (the homeowners association) that specifies who is the responsible party should something go wrong with the line.

Barkhouse asked for clarification of action(s) taken by the Council. Gagnon explained the Council approved an amendment to the sewer ordinance (one that allows for exceptions such as this) and then, in a separate action, granted the exception for this project. As discussion continued, Gagnon said the fact the sewer ordinance had not previously allowed for such exceptions in cases such as this was an impediment. This project, she said, provided an impetus for the city to incorporate some flexibility into the process when appropriate.

The board discussed language in the special exemption relating to limiting future expansion, and having a note on the plan to that effect. Harriman said a note to that effect can be added to the plan.

DeLeo asked questions about the stormwater runoff system. Watt responded to his questions, and explained that the infrastructure

Project approved previously for by a different developer, being reviewed again

Discussion on sewer lines serving property

Private line versus public line for sewer service to the project

City Council granted special exception in this case to developer

Maintenance agreement will be required in order for project to proceed

Gagnon explains amendment to sewer ordinance and this project's relation to that amendment

Limitation on future expansion; should be a note on the plan

DeLeo had the most questions about is designed to collect runoff from the new impervious surface (pavement) proposed as part of this project. DeLeo asked what happened when the runoff left the property; it does go onto a neighboring property, but Watt said the rate of runoff leaving the property is the same or less than pre-development conditions as shown in hydrologic models.

**Discussion on
stormwater runoff**

DeLeo asked about the declaration of covenants contained in the deed for the original proposed project by Darbro, and asked if that applied to this project. Harriman explained the Phase I/Phase II nature of the property and how this project is essentially Phase II. DeLeo said his question boiled down to whether the covenants applied to both phases or just Phase I, the existing development. Wilson asked if the conditions and restrictions outlined in the deed applied to this new proposed project.

**Discussion about
covenants from Phase
I and applicability (if
any) to Phase II**

Mike Wight noted that his project is not a condominium development, that it is instead regular apartments where he is the owner of the whole project and tenants pay rent to his company. Discussion continued on this matter among the board members, about the covenants, restrictions and easements outlined in the deed. Wight said it is his intention to maintain the driveway and the utilities underneath the driveway, even though he will not be part of the homeowner's association if his project goes through. Discussion and questions continued until Gagnon commented that CCRs (Covenants, Conditions and Restrictions) are private regulations enforced among the group of people who are subject to them. She said city officials do not get involved in such matters. She said the deeds are important and included so that the city knows what rights-of-way and easements are in place for utilities and infrastructure. Barkhouse said he brought up the right-of-way question to make sure the developer had legal access into the property. Gagnon said the city shares an interest in ensuring that.

**Mike Wight speaks;
extended discussion of
covenants, conditions
and restrictions as
well as easements**

DeLeo said the discussion had answered some of his questions but raised others. He wondered how snow plowing would be taken care of on a private road serving properties owned by different owners, for example. Wight said plowing had been discussed at the community meeting in December. DeLeo said he realized there are certain matters that cannot be refereed by the Planning Board but that it wants to make sure current homeowners there are kept whole, and Wight said that is his interest as well.

**Questions about snow
plowing; matter
beyond purview of
Planning Board**

Discussion returned to stormwater management. Wilson referenced a 12-inch diameter underground pipe crossing the property and asked questions about it. In response to questions, the developer's

**Discussion resumes
on stormwater plan**

representatives said the pipe is about 400 feet long with a height difference of about 7 feet from intake to outfall. Watt said the intent of the pipe is to collect water from an adjacent property, to keep it separate from water running off from the proposed development. Wilson asked additional questions about the pipe and Watt responded. One question was about utility crossings; Watt said such crossings are not uncommon, but are typically resolved as the project is constructed.

Discussion continues on stormwater and management plan

Wilson asked about the effect of the runoff being “channelized” as it crossed the property, and how fast it would exit the 12-inch pipe at its outfall — he said he assumed the velocity would have increased over its current speed. Watt said the pipe was being used because the treatment system proposed for the project will not have capacity to treat this runoff coming from the adjacent property. She acknowledged the velocity of the runoff in the pipe would increase. She referenced the rip-rap apron shown on sheet C3, and said the rip-rap is sized to match the culvert and thereby account for the velocity of the water coming out of the pipe.

Discussion of runoff from adjacent property, how that is to be treated

Wilson asked how a 400-foot pipe is maintained and kept clear. Watt said a grate can be placed over the intake to keep material out of the pipe. Wilson asked what is located on both ends of the pipe. Harriman said the lot where the runoff would be coming from is vacant. Watt said the amount of water coming into the pipe should not be large, and said the pipe is being included almost as a precautionary measure to protect the treatment system planned for on-site runoff at the development. Watt said the overall amount of runoff leaving the site is less than pre-development because of that on-site filter.

Discussion of what happens to runoff when it leaves the applicant’s property

Wilson asked about screening for a proposed Dumpster, which is required under ordinance although he said he did not see any indication of such screening on the plan or in any of the application text. Wilson referenced Chapter 56, the Unified Development Ordinance, § 813.18, “Screening of Trash Receptacles.” Harriman asked if the board wanted a note on the plan, and Wilson said yes. Gagnon affirmed that such screening is required by ordinance.

Need for Dumpster to be screened, per city ordinance

Wilson asked about a fire hydrant depicted on the plan and the note that it is non-functional. He asked if that hydrant would be removed. He noted a previous plan had called for bollards around the hydrant. Fire Inspector Mike Hangge said the city is asking the developer to move an existing hydrant on High Street closer to the entrance to the development so that there is a proper fire protection water supply more easily accessed by the Fire Department. He said doing so

Discussion about fire hydrant that is currently not in use or in operation

would suffice as fire protection for both the existing and proposed developments. He said the hydrant in the development has been non-functional for a long time. Hangge said he cannot require the developer to remove it but said the code does requires any hydrant to be maintained in operable fashion. If it isn't going to be maintained, it needs to be removed. Gagnon noted the hydrant is not and will not be property of the applicant/developer, however.

A general discussion about water supply to the development ensued. Wilson asked if the water supply for this proposed development would come off of the existing water supply to the existing development and Harriman and Watt said that is the plan. Discussion returned to the inoperable fire hydrant. Hangge said it was shut down two decades ago due to lack of payment. Wilson said his concern about the hydrant was for matters such as snow plowing, and if the hydrant was marked so that it would not be hit. Hangge said it is a private hydrant and not in the scope of this project.

Wilson asked if city staff had any other issues to raise regarding completeness (or lack thereof) on the application. No issues were raised.

Wilson opened a public hearing at 7:53 PM. Christopher Stanley, a resident of Beckwith Woods and current president of the Beckwith Woods Community Association, spoke and shared some concerns about agreements between the association and the developer, regarding water and sewer lines and road maintenance. There was discussion about whether the city would take over ownership of the water line because with this development the line would have two users. Stanley said that was discussed at the meeting in December but that the association had heard nothing since that time. There was discussion of the sewer line as well, and Stanley asked how the City Council's recent actions would impact this project. Wilson reminded Stanley the board's focus at this point is on completeness, and Stanley said the association's primary concern is that there are not yet any agreements in place regarding the proposed shared utilities.

DeLeo asked if the water line would become a public water line, as it is shared by two users.

Gagnon a note was added to the plan about a booster pump being installed to make sure existing water pressure issues at the site are not compounded.

Discussion about water supply to the project in general

More talk of the existing fire hydrant

Public hearing opened at 7:53 PM

Christopher Stanley, president of Beckwith Woods Community Association, speaks and shares concerns and questions

Question about water line becoming public

Mention of booster pump, note on plan

Wilson asked if there were any other comments from the public regarding the completeness of the application. There being none, he closed the public hearing at 7:59 PM.

Watt said the original plan was for this project to tie into the water line at High Street, but that following the meeting with abutters in December the plan was changed so that the water line for this project would hook into a stub at the end of the existing water line serving Beckwith Woods. She said talking with the neighbors was one of the main reasons the line was moved. Wilson asked where the booster pump would be placed and Watt said within the new development. She said the intent of that pump is to provide adequate water pressure in the new development. She said there would be no effect on the water pressure of the existing development. Harriman said Note 19 on the plan deals with this.

Wight returned to the podium. He said the existing water line has large capacity and was designed to serve both phases of the original proposed project. He said going this route would be a benefit to the existing development. Regarding the sewer line, he said the proposed arrangement would reduce the homeowners association's burden from 100 percent to 50 percent, with him as the new developer assuming the other 50 percent. He said moving the water line, as Watt outlined, was done as a good-neighbor sort of move.

Wilson asked how Wight felt about reaching agreements with abutters. Wight said previous meetings had gone well and that it was just a matter of verbiage and making people comfortable. He said he wants to make things better for both sides. Wilson asked for clarification from the city about whether the line would become a public line with two users on it. Code Enforcement Officer Dwight Tilton said an easement would need to be added to the plan allowing the Water Department access to the line if it becomes public. Gagnon said a general utility and repair easement could be added. Tilton explained why stagnation may be causing some of the current silt and water pressure problems in the existing line. Gagnon reiterated the city would ask for a blanket easement allowing access to utilities. Watt and Harriman said they thought an easement to that effect had been added to the plan already. DeLeo asked if there would be a letter from the Water Department about ownership of the line. Hangge spoke about work Water Superintendent Reggie Winslow has done researching the matter. DeLeo reiterated his belief in the importance of having something in writing from Winslow. Wilson asked if DeLeo was concerned about access (easement for access) or ownership and DeLeo said ownership.

**Public hearing closed
at 7:59 PM**

**Discussion about
water line that will be
serving the new
development and
sharing of line with
Beckwith Woods**

**Wight shares his
perspective as the
developer for the
project on shared
utility lines**

**Discussion of Wight
reaching agreements
with neighbors**

**Discussion of
ownership and access
to utility lines,
particularly water**

City Manager David Cole said if the water line becomes the responsibility of the city, the city will take care of it. If not, he said, it is a private matter between the two entities. He said he would defer to Gagnon and city staff on how to memorialize ownership, either way.

Gagnon asked DeLeo to re-state his point. DeLeo said he wants to make sure everyone knows the rules and who's going to maintain the water lines.

Lessard said everything seemed to be coming together. He recommended the board vote on the preliminary review and then have the applicant come back for final approval and see what agreements had been reached. Wilson paraphrased and asked if Lessard was asking to vote on determination of completeness, with conditional requirements that be put on a revised plan for final approval at a separate meeting. Lessard said yes.

Gagnon asked for clarification. Wilson said the board wants a clear determination of ownership, because everything else (maintenance, etc.) will follow from that. Wilson said the board does not want to approve anything that is not well-documented. DeLeo said that what Wilson was describing/proposing would address his concern.

Wilson asked for a review of other items needed. Gagnon mentioned the screened Dumpster. Barkhouse mentioned adding a note about limiting future expansion. Wilson asked if there was a need for the board to see agreements between the applicant/developer and the abutting property owners on matters such as road plowing, etc. The board agreed that is not really a matter for Planning Board review.

Wilson recapped the three items the board would be asking for the next time the applicant comes before the board: to memorialize ownership of the water system, address the issue of the Dumpster screening, and adding a note that explicitly says there is a limit on the future expansion of the sewer system.

Lessard proposed that with regard to the determination of application completeness for the modification to a September 5, 2012 approved and recorded Major Subdivision Plan and re-approval of a non-established/lapsed Major Use Site Development Plan titled Beckwith Pines, that the board deem the application complete and that it has all the information that it needs for it to be complete. He read the information about the parcel: that it is 2.3 acres off Route 3/ High Street via Beckwith Court (Tax Map/Lot: 16/47-3), in the Commercial Zone. Wilson

City Manager David Cole addresses water lines and ownership

DeLeo reiterates ownership concerns

Lessard suggests board make determination of completeness, not to make final review at tonight's meeting

Reiteration of the board's concerns, particularly in regard to ownership of the water line

Note of other items which need review; others beyond purview of the board

Recap of three items: ownership of water line, screen Dumpster and limit on future sewer expansion

Determination of completeness for Beckwith Pines, with three conditions for final review at future meeting (ownership of water line, screen the Dumpster and note on

asked if that was a motion, and Lessard said it was. It was seconded by DeLeo. Wilson suggested adding three conditions that are to be addressed at the next meeting, as requirements for final approval:

- Memorializing ownership of the water system
- Screening the Dumpster
- Limiting on any future expansion of the sewer system

There was no objection to the conditions suggested by Wilson. Lessard asked about making it a condition that the developer meets with the neighbors prior to the next meeting. While Wilson said the board could strongly encourage that sort of thing, he did not think the board could require it. Lessard said he was OK with that. **Wilson called for a vote on the seconded motion, and it carried unanimously (4-0).**

Wilson noted that what the board just voted on was a determination of completeness and that the applicant would need to come back for final approval. He asked for clarification from Gagnon, who said that was the board's call to make and it seemed that was what they had decided. Harriman asked for clarification that the board was only looking for the applicant to meet the three conditions just outlined and that the applicant would then be good to go, and Wilson said the board believed that to be true. Wilson said there would be additional opportunity for the public to speak at the next meeting, as well.

[NOTE: For the reasons outlined above by Wilson, agenda item 4B — "PUBLIC HEARING, DELIBERATION, FINDING OF FACTS AND CONCLUSION" — was not taken up by the board. It will be addressed at a subsequent meeting.]

~~5. Preliminary Plan for a Major Use Site Development Plan and Major Subdivision Plan entitled Atlantic Storage for Atlantic Landscape Construction.~~

[NOTE: As stated previously in these minutes, this item was taken off of the agenda prior to the meeting at the applicant's request.]

6. After-the-Fact Amendment to an Amended Subdivision known as Guptil Farm Subdivision (Planfile 29-118) for Jordan & Derr Inc. and Doug Kerr. The modifications resulted in the relocation of boundary lines around Lot 20 (Tax/Map 41/72) and the partial relocation of a 100-foot wide utility easement, owned by Emera Maine, in the Neighborhood Zone.

plan limiting future sewer expansion):
AFFIRMATIVE (4-0)

List of conditions the board wants to see met at next meeting

Discussion with the representatives of the developer recapping what will be needed for the next meeting

Note about why item 4B was not taken up tonight by the board

Agenda item #5 was removed, per request of applicant, from agenda previously

GUPTIL FARM SUBDIVISION, for Jordan & Derr Inc. and Doug Kerr

Steve Salsbury, land surveyor, represented the applicant. Salsbury explained that the matter before the board tonight involved a recent relocation of the utility easement as well as an adjustment to the lines of Lot 20 in the subdivision. He said parties other than himself had decided that those changes needed to come back before the Planning Board in order to amend the subdivision because of the changes to its configuration.

Barkhouse asked what exactly had changed. Salsbury referred to two versions of plans that showed what the original configuration was as well as what the proposed amendment would do. Wilson asked why the changes had been made. Salsbury explained a house was built on Lot 20 several years ago that encroached into the utility easement. Salsbury said he and the applicant had negotiated with the utility (Emera Maine). There was general discussion about roads and utility easements and rules/regulations relating to crossings of the two.

In response to questions, Salsbury outlined what specific lot and easement lines had been moved, what property was transferred to and from whom and why, and reiterated why the matter was coming before the Planning Board tonight.

DeLeo noted the utility easement had not previously crossed Lot 19 but now does so. Salsbury said that lot is still owned by the applicant, and there is also not a house on that lot at this time. Wilson asked if there were any questions or comments from city staff, and there were not. Wilson opened a public hearing at 8:25 PM. There was no public comment. The public hearing was then closed, also at 8:25 PM.

DeLeo made a motion to approve the after-the-fact amendment to an amended subdivision known as Guptil Farm Subdivision (Planfile 29-118) for Jordan & Derr Inc. and Doug Kerr (the amendment being modifications which resulted in the relocation of boundary lines around Lot 20 (Tax Map/Lot 41/72) and the partial relocation of a 100-foot wide utility easement, owned by Emera Maine) in the Neighborhood Zone. Barkhouse seconded the motion, there was no further discussion and the motion then passed unanimously (4-0).

7. Adjournment

Jim Barkhouse moved to adjourn the meeting after signing mylars and plans. John DeLeo second the motion, and with no

Steve Salsbury represents applicant Salsbury explains why project is before the Planning Board

Salsbury explains what changes were made to Lot 20 and the utility easement

Additional explanation from Salsbury

Question regarding Lot 19/ easement, answered by Salsbury

Public hearing opened at 8:25 PM, no public comment, hearing closed at 8:25 PM


After-the-fact amendment to amended subdivision known as Guptil Farm Subdivision: APPROVED (4-0)

Meeting adjourned at 8:26 PM

discussion it passed unanimously (4-0). The meeting was adjourned at 8:26 PM. Mylars and plans for Guptil Farm Subdivision were signed.

Minutes prepared by: Steve Fuller, Assistant City Planner

Minutes approved by:

3-7-18 
Date Mike Howie, Ellsworth Planning Board, Secretary

Mylars and plans for Guptil Farm Subdivision signed

Agendas and minutes posted on the city of Ellsworth's website: ellsworthmaine.gov